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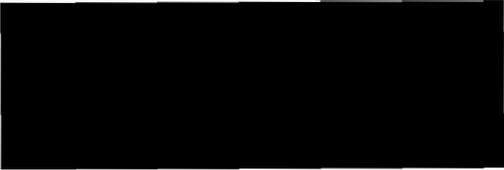
U.S. Department of Homeland Security
20 Massachusetts Avenue NW. Rm. A3000
Washington, DC 20529



U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 22 2006**

IN RE:

Petitioner:
Beneficiary:



PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Cambodia, as the fiancée of a United States citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K). The director denied the petition after determining that the petitioner had failed to submit documentary evidence that he was legally free to marry the beneficiary at the time the petition was filed. Specifically, because the petitioner was fourteen years old at the time he filed the petition, he was required to submit proof that a judge in the state of New Hampshire had consented to allow him to marry.

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry. . . .

Section 214(d) of the Act, 8 U.S.C. 1184(d), states in pertinent part that a fiancé(e) petition:

shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, *and are legally able and actually willing to conclude a valid marriage* in the United States within a period of ninety days after the alien's arrival . . . [emphasis added].

The AAO notes that a fourteen year old male is allowed to marry in the state of New Hampshire with parental consent and a judge's authorization. The petitioner has parental consent, but not authorization from a judge. On appeal, the petitioner states that his representative was ill in the hospital for six weeks; thus, he did not receive the director's September 13, 2005 request for evidence (RFE) until December 2005. He requests additional time to obtain the required evidence that a New Hampshire judge has granted him permission to marry. The AAO finds no evidence on the record that the petitioner is represented by counsel, and since the RFE was sent to the applicant's address of record, it must be concluded that the petitioner received the RFE prior to December 2005. As of the date of his appeal, February 15, 2006, the petitioner, who is still fifteen years old, had not obtained a judge's consent to his marriage. Thus, he is not yet considered legally able to conclude a valid marriage in the United States, and the petition must be denied.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice. Once the petitioner obtains evidence that a judge in New Hampshire has granted permission for him to marry, the petitioner may file a new I-129F petition on the beneficiary's behalf in accordance with the statutory requirements.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.